



Billing Code: 4710-24

DEPARTMENT OF STATE

48 CFR Parts 636, 637 and 652

[Public Notice 9703]

RIN 1400-AE04

Department of State Acquisition Regulation

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: The Department of State (DOS) is amending the Department of State Acquisition Regulation (DOSAR) to provide new guidance prescribing more stringent safety requirements for certain overseas construction and services projects.

DATES: Effective Date: This interim rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment Date: The Department of State will accept comments on this interim rule until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: KosarCM@state.gov. You must include the RIN 1400-AE04 in the subject line of your message.
- Mail (paper only): Ms. Colleen Kosar, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street, NW, Suite 1060, State Annex Number 15, Washington, DC 20520.

- Persons with access to the internet may view this interim rule and submit comments by visiting: <http://www.regulations.gov>, and [searching for docket number DOS-2017-0007](#).

FOR FURTHER INFORMATION CONTACT: Ms. Colleen Kosar, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street, NW, Suite 1060, State Annex Number 15, Washington, DC 20520. Telephone 703-516-1685.

SUPPLEMENTARY INFORMATION: The purpose of this interim rule is to update 48 CFR part 636, section 636.513, Accident Prevention; 48 CFR part 637; and 48 CFR part 652, section 652.236-70, Accident Prevention. The Department of State (DOS) is rescinding the class deviation that authorized the substitution of DOSAR 652.236-70, Accident Prevention, for FAR 52.236-13 Accident Prevention, thus reinstating the requirement for use of FAR 52.236-13. Additionally, a new clause, “Additional Safety Measures,” is added to replace DOSAR 652.236-70. Specifically, the interim rule:

- Amends section 636.513 to reinstate the use of FAR 52.236-13, Accident Prevention, together with its Alternate I, and to prescribe the use of DOSAR clause 652.236-70, Additional Safety Measures.
- Amends part 637, to add a new section 637.102-71 to provide a cross-reference to 636.513 for services contracts.
- Amend section 652.236-70 to replace the current clause (“Accident Prevention”) with a new clause (“Additional Safety Measures”).

The Department has determined to issue an interim final rule due to the overriding importance of the safety of individuals associated with overseas DOS construction and services projects.

Regulatory Findings

Administrative Procedure Act.

In accordance with 5 U.S.C. 553(a)(2), which exempts from the Administrative Procedure Act matters relating to contracts, the Department is publishing this rulemaking as an interim final rule, but is inviting public comment.

Regulatory Flexibility Act.

This rulemaking is not a "rule" as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); therefore, that Act does not apply to it. However, the Department of State has reviewed this regulation and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. This determination was based on the fact that few of the DOS overseas construction contracts are performed by small business concerns. In FY 2015, only 19 of the 161 DOS overseas construction contractors to which this would apply were small business concerns.

Unfunded Mandates Act of 1995.

This interim rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996.

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 801 et seq.). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Orders 12866, 13563 and 13771.

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department of State does not consider this interim rule to be an “economically significant regulatory action” under Executive Order 12866.

The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders and finds that the benefits of this rule outweigh any costs, which the Department assesses to be minimal. This interim final rule is not subject to the requirements of Executive Order 13771 because this final rule has been determined to be non-significant within the meaning of the Executive Order 12866.

Executive Order 13132.

This interim rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this interim

rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Order 13175.

The Department has determined that this interim rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this interim rulemaking.

Paperwork Reduction Act.

The interim rule removes a data collection requirement from Department of State Acquisition Regulation (DOSAR) information collection under OMB Control Number 1405-0050. The data collection requirement removed is DOSAR 652.236-70, Accident Prevention, which requires construction contractors to submit a written accident prevention plan. The removal of this requirement will reduce the total burden hours of this information collection under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) by 150 hours.

This information collection renewal was approved by OMB on February 23, 2016. The removal of the data collection will not affect any other data collection requirements within this information collection.

60-Day Notice of Proposed Information Collection: Department of State Acquisition Regulation (DOSAR)

The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from

all interested individuals and organizations. The purpose of this document is to allow 60 days for public comment preceding submission of the collection to OMB.

Submit comments to the Office of Management and Budget (OMB) and Department of State, Office of the Procurement Executive, up to **[Insert date 60 days after date of publication in the *Federal Register*]**.

Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB).

You may submit comments by the following methods:

- *E-mail:* oira_submission@omb.eop.gov. You must include the information collection title and the OMB control number in the subject line of your message.
- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

In addition, please direct a copy of your comments to the Department of State, Office of the Procurement Executive. You may submit comments by the following methods:

- *E-mail:* kosarcm@state.gov
- *Regular Mail:* Ms. Colleen Kosar, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street, NW, Suite 1060, State Annex Number 15, Washington, DC 20520.

You must include the information collection title and the OMB control number in any correspondence.

Direct requests for additional information regarding the collection listed in this document, including requests for copies of the proposed collection instrument and supporting documents, to Ms. Colleen Kosar, U.S. Department of State, Office of the

Procurement Executive, 2201 C Street, NW., Suite 1060, State Annex Number 15, Washington, DC 20520; who may be reached on (703) 516-1685.

- *Title of Information Collection:* Department of State Acquisition Regulation (DOSAR)
- *OMB Control Number:* 1405-0050
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* Bureau of Administration, Office of the Procurement Executive (A/OPE)
- *Form Number:* No Form
- *Respondents:* Any business, other for-profit, individual, not-for-profit, or household
- *Estimated Number of Respondents:* 1647
- *Estimated Number of Responses:* 2600
- *Average Time Per Response:* 98 hours
- *Total Estimated Burden Time:* 253,764 hours
- *Frequency:* On Occasion
- *Obligation to Respond:* Required

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

This information collection covers pre-award and post-award requirements of the DOSAR. During the pre-award phase, information is collected to determine which proposals offer the best value to the U.S. Government. Post-award actions include monitoring the contractor's performance; issuing modifications to the contract; dealing with unsatisfactory performance; and closing out the contract upon its completion. This program collects information pursuant to the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302), the Omnibus Diplomatic Security and Antiterrorism Act (22 U.S.C. 4852), and the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864).

Methodology:

Information is collected from prospective offerors to evaluate their proposals. The responses provided by the public are part of the offeror's proposals in response to Department solicitations. This information may be submitted electronically (through fax or e-mail), or may require a paper submission, depending upon complexity. After contract award, contractors are required to submit information, on an as-needed basis, and related to the occurrence of specific circumstances.

List of Subjects in 48 CFR Parts 636, 637 and 652

Government procurement.

For the reasons stated in the preamble, the Department of State amends 48 CFR chapter 6 as follows:

1. The authority citation for 48 CFR parts 636, 637 and 652 continues to read as follows:

Authority: 22 U.S.C. 2651a, 40 U.S.C. 121(c) and 48 CFR chapter 1.

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

2. Section 636.513 is revised to read as follows:

636.513 Accident prevention.

(a) The contracting officer shall insert the clause at 652.236-70, Additional Safety Measures in all solicitations and contracts that include FAR 52.236-13, Accident Prevention, Alternate I, *i.e.*:

(1) When a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold and the contract will involve work of a long duration or hazardous nature; or

(2) When a contract for services to be performed at Government facilities (see FAR part 37) is contemplated, and technical representatives advise that special precautions are appropriate, such as contracts for building maintenance, building operations or infrastructure repair.

(b) The contracting officer shall confer with OBO/OM/SHEM if there are any questions on any factors listed in paragraph (a) of the clause, or if the contracting officer has any questions regarding safety issues.

PART 637—SERVICE CONTRACTING

3. Section 637.102-71 is added to read as follows:

637.102-71 Safety considerations.

When contracting for services to be performed overseas, always consider 636.513(b) and FAR 36.513(b), and consult with technical representatives to determine whether special precautions are appropriate, such as when the services are for building operations, building maintenance or infrastructure repairs.

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 652.236-70 is revised to read as follows:

652.236-70 Additional Safety Measures.

As prescribed in 636.513, insert the following clause.

ADDITIONAL SAFETY MEASURES (OCT 2017)

In addition to the safety/accident prevention requirements of FAR 52.236-13, Accident Prevention Alternate I, the contractor shall comply with the following additional safety measures.

(a) *High risk activities.* If the project contains any of the following high risk activities, the contractor shall follow the section in the latest edition, as of the date of the solicitation, of the U.S. Army Corps of Engineers Safety and Health manual, EM 385-1-1, that corresponds to the high risk activity. Before work may proceed, the contractor must obtain approval from the COR of the written safety plan required by FAR 52.236-13, Accident Prevention Alternate I (see paragraph (f) of this clause), containing specific hazard mitigation and control techniques.

(1) Scaffolding;

- (2) Work at heights above 1.8 meters;
- (3) Trenching or other excavation greater than one (1) meter in depth;
- (4) Earth-moving equipment and other large vehicles;
- (5) Cranes and rigging;
- (6) Welding or cutting and other hot work;
- (7) Partial or total demolition of a structure;
- (8) Temporary wiring, use of portable electric tools, or other recognized electrical

hazards. Temporary wiring and portable electric tools require the use of a ground fault circuit interrupter (GFCI) in the affected circuits; other electrical hazards may also require the use of a GFCI;

(9) Work in confined spaces (limited exits, potential for oxygen less than 19.5 percent or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.);

(10) Hazardous materials - a material with a physical or health hazard including but not limited to, flammable, explosive, corrosive, toxic, reactive or unstable, or any operations, which creates any kind of contamination inside an occupied building such as dust from demolition activities, paints, solvents, etc.; or

(11) Hazardous noise levels as required in EM 385-1 Section 5B or local standards if more restrictive.

(b) *Safety and health requirements.* The contractor and all subcontractors shall comply with the latest edition of the U.S. Army Corps of Engineers Safety and Health manual

EM 385-1-1, or OSHA 29 CFR part 1910 or 1926 if no EM 385-1-1 requirements are applicable, and the accepted contractor's written safety program.

(c) *Mishap reporting.* The contractor is required to report *immediately* all mishaps to the COR and the contracting officer. A "mishap" is any event causing injury, disease or illness, death, material loss or property damage, or incident causing environmental contamination. The mishap reporting requirement shall include fires, explosions, hazardous materials contamination, and other similar incidents that may threaten people, property, and equipment.

(d) *Records.* The contractor shall maintain an accurate record on all mishaps incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to or theft of property, materials, supplies, or equipment. The contractor shall report this data in the manner prescribed by the contracting officer.

(e) *Subcontracts.* The contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(f) *Written program.* The plan required by paragraph (f)(1) of the clause entitled "Accident Prevention Alternate I" shall be known as the Site Safety and Health Plan (SSHP) and shall address any activities listed in paragraph (a) of this clause, or as otherwise required by the contracting officer/COR.

(1) The SSHP shall be submitted at least 10 working days prior to commencing any activity at the site.

(2) The plan must address developing activity hazard analyses (AHAs) for specific tasks. The AHAs shall define the activities being performed and identify the work sequences, the specific anticipated hazards, site conditions, equipment, materials,

and the control measures to be implemented to eliminate or reduce each hazard to an acceptable level of risk. Work shall not begin until the AHA for the work activity has been accepted by the COR and discussed with all engaged in the activity, including the Contractor, subcontractor(s), and Government on-site representatives.

(3) The names of the Competent/Qualified Person(s) required for a particular activity (for example, excavations, scaffolding, fall protection, other activities as specified by EM 385-1-1) shall be identified and included in the AHA. Proof of their competency/qualification shall be submitted to the contracting officer or COR for acceptance prior to the start of that work activity. The AHA shall be reviewed and modified as necessary to address changing site conditions, operations, or change of competent/qualified person(s).

(End of clause)

Eric N. Moore,
Procurement Executive (Acting),
Department of State.

[FR Doc. 2017-26711 Filed: 12/11/2017 8:45 am; Publication Date: 12/12/2017]